

The Use of Discretionary Authority in the Housing Choice Voucher Program: A CRS Study

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Summary

The Section 8 Housing Choice Voucher (HCV) program is the federal government's largest needs-based housing assistance program, in terms of both the number of families served and the cost to the federal budget. Under the program, the Department of Housing and Urban Development (HUD) provides funds to local public housing authorities (PHAs), which, in turn, provide subsidies to low-income households to use to rent private market apartments. Although the basic structure of the program is governed by federal law and regulations, PHAs have discretion to determine many important elements. How PHAs use their discretion has implications for how families experience the program, how local communities perceive the program, and the program's cost.

Little comprehensive information is available about how PHAs use their discretion under the HCV program. Thus, to gain insight that might be useful to Congress, CRS conducted a study that looked at a representative sample of PHAs. Data for the study were taken from the administrative plans that PHAs are required to produce. To supplement information from the plans, interviews were conducted with a subsample of PHA officials. Where possible, results of the CRS study were compared to a study conducted by HUD in 2000. The findings of this study may be relevant to policymakers as they consider HCV reform proposals.

Major Findings

- Almost all PHAs (96%) use local preferences (i.e., specified categories of families) to rank families on waiting lists for assistance. This is a change from 2000, when only about 59% of PHAs used local preferences.
- All PHAs have policies that consider a family's prior criminal activity and most consider a family's prior unmet financial obligations when evaluating eligibility for assistance. The policies vary in terms of what PHAs look for (types of crime, evidence) and how far back they look. Most PHAs have also adopted policies that allow them to evaluate families on a case-by-case basis. PHAs use similar policies to terminate assistance for criminal activity.
- Most PHAs (79%) have adopted a minimum rent of more than \$0 per month, and the majority (70%) have adopted the maximum allowable minimum rent (\$50). Some PHA officials said they saw minimum rents as promoting fairness; cost savings were not generally mentioned.
- Most PHAs require families to report all changes in income between annual recertifications, but most PHAs do not adjust families' subsidies at that time unless the income increase is above a certain threshold. In interviews, some PHA officials said that the administrative hassle of recalculating subsidies was not worth the savings, but some noted that a recent verification system required by HUD had led them to recertify more frequently than they had been previously.
- It is commonly understood that most PHAs have long waiting lists and many PHAs have closed their waiting lists to new applicants. When opening their waiting lists, the majority of PHAs (77%) determine who is added based on the date and time the application was submitted. About 18% of PHAs use a random selection method. In interviews, several PHA officials noted that they found it challenging to manage the process of opening their waiting lists because of an overwhelming demand for vouchers.

- Once a family is selected from the waiting list, it has a limited time in which to use its voucher. Most PHAs provide families with the statutory minimum of 60 days of initial search time, although most also allow families an extension to 120 days without requiring the families to meet other conditions (such as being elderly or having a disability).
- While PHA administrative plans must be made publicly available, it was difficult for CRS to obtain copies of the plans in several cases.
- Most PHA officials who were interviewed saw their plans as program guidebooks, which is a different purpose than that envisioned by HUD.
- It appears that many PHAs have purchased their administrative plans from private companies. Based on CRS interviews with PHA officials, it seems that some PHAs perceive their discretionary authority as being limited to the options provided in the purchased plans, or they are unaware of the full discretionary authority that they have.

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Introduction

The Section 8 Housing Choice Voucher (HCV) program is the federal government's largest needs-based housing assistance program, in terms of both the number of families served and the cost to the federal budget.¹ The program serves roughly 2 million low-income families at a cost of approximately \$19 billion (in FY2012) in discretionary appropriations.

The Section 8 HCV program provides eligible low-income families with subsidies that they can use to rent the housing of their choice from private market landlords. Families are generally eligible to receive a voucher if they are very low income (earning 50% or less of the local area median income) or if they are low income (earning 80% or less of the local area median income) and meet other special criteria such as being elderly or having disabilities. However, 75% of all vouchers available in a year must be provided to extremely low-income families (earning 30% or less of the area median income). The subsidies cover the difference between a family's minimum contribution toward their rent (generally, 30% of family income) and the market rent for the housing unit.²

The Section 8 HCV program has a unique administrative structure. The U.S. Department of Housing and Urban Development (HUD) provides federal funds to Public Housing Authorities (PHAs)—which are state-chartered local government entities—to administer the program.³ While the basic structure of the program, such as the type of assistance provided and who is eligible, is governed by federal statutes and regulations, many important elements of the program are left to the discretion of local PHAs. That local discretion is the subject of the CRS study presented in this report.

Evolution of PHA Discretionary Authority

PHAs have been responsible for administering federal housing assistance since the mid-1930s, when the low-rent public housing program was created. Public housing is federally subsidized housing owned by local PHAs and available to low-income tenants for below-market rents.⁴ In the earliest years of the public housing program, almost all aspects of the program design were left to PHAs. Over time, the federal government, through both congressional legislation and administrative actions, increased the amount of federal rules and regulations governing the program. By the time the Section 8 housing assistance program—the precursor program to the Housing Choice Voucher program—was enacted in the mid-1970s, federal law governing public housing directed much of the administration of the program, including which families PHAs should serve (both in terms of income eligibility and priorities and preferences for certain types of families) and how much PHAs should charge families for rent. These rules and regulations were designed to promote the federal policy goal of ensuring that housing is safe, decent, affordable, and available to certain populations. The rules were extended to the new Section 8 program, and over time additional rules and regulations were added to Section 8 as additional policy goals emerged—such as promoting tenant choice and family self-sufficiency.

By the mid-1990s, federal policy had shifted in favor of deregulation and greater local control in federal social assistance programs, a policy often referred to as devolution. Congress passed laws

¹ The program is codified at 42 U.S.C. §1437f(o).

² The maximum subsidy level is capped at what is termed the “payment standard,” which is set by PHAs at between 90% and 110% of local fair market rent.

³ PHAs also administer the federal low-rent public housing program.

⁴ For more information, see CRS Report R41654, *Introduction to Public Housing*, by Maggie McCarty.

to deregulate federal housing assistance programs throughout the 1990s, culminating with a major assisted-housing reform bill: the Quality Housing and Work Responsibility Act of 1998 (QHWRA, P.L. 105-276). As a result of QHWRA and earlier deregulation laws, PHAs were given broader latitude in establishing their own tenant selection policies, income and rent policies, and administrative operations policies in both the Section 8 HCV program and low-rent public housing.

The primary policy goal behind the devolution of social programs, including the HCV program, is to allow states and localities to design their programs differently in order to reflect their different interests, values, and needs. The resulting variations in program policies across PHAs are consistent with that goal. Devolution may also allow communities to experiment with new and innovative models for providing assistance. As such, devolution may serve the federal purpose of increasing efficiency in the program if PHAs find less costly ways to provide housing assistance. On the other hand, devolution might present challenges to achieving federal policy goals, such as promoting consistent and equitable access to assistance. There is also a concern that devolution could lead some PHAs to elect policies that will be less advantageous to low-income populations. Questions may also arise about how best to balance federal policy intentions with the desires of state and local administrators when they are in conflict. Finally, there are concerns that increased devolution may lead to lax oversight of federal funds. Due to these policy tensions, policymakers continue to debate how much discretionary authority should be afforded to PHAs.

PHAs have several areas of discretion in the administration of the HCV program; they are able to set some of their own policies and have the flexibility to determine how some federal policies are implemented. For example, PHAs have discretion to determine

- which categories of families to prioritize for assistance (through a practice known as “local preferences”),
- which categories of families to exclude from assistance (through screening, denial of admission, and termination of tenancy policies),
- how families are chosen for assistance (through waiting list policies),
- how much time families have to use their assistance (through housing search time policies),
- how much families will be required to pay in rent (through minimum rent policies), and
- how often families’ rents will be adjusted (through interim recertification policies).

The decisions made by PHAs in all of these policy areas—which are the focus of this study—and the many other policy areas in which they have discretion have implications for the federal cost of the program and the achievement of federal policy goals, and for how families experience and access the HCV program.

CRS Study of PHA Discretion

This study presents findings on the use of PHA discretionary authority. It characterizes PHA discretionary policies into three major categories: tenant selection, income and rent determination, and program administration. The study focuses upon discretionary policies within these areas because they affect which families receive assistance, the level of assistance families receive, and the way in which families access that assistance. CRS collected data on the following specific PHA discretionary policies: local preferences, screening and denial of assistance,

termination of assistance, minimum rent level, interim recertifications, waiting list administration, and search time and extensions. The following summarizes the data sources and the data collection process for this study, and it also describes previous research on PHAs' discretionary authority. (A more thorough discussion of the methodology can be found in **Appendix B**.) Descriptions of the selected PHA discretionary policies and the data collected on these policies are provided in the research findings section of this report.

Data Sources and the Data Collection Process

In order to collect data on PHAs' discretionary policies, CRS reviewed PHAs' Section 8 Housing Choice Voucher administrative plans and interviewed PHA officials. The data collection process thus had two stages. The first stage involved the collection and review of PHA administrative plans, which are policy documents that PHAs are required to develop and make publicly available. The policies stated by PHAs within their administrative plans are the primary source of data for this study. PHAs were asked to provide their plans during the period from October 2011 through January 2012. The second stage of data collection involved interviews with officials from a subsample of PHAs. During the interviews, which took place in January 2012, PHA officials were asked to explain their PHAs' discretionary policies. The data collection processes for the administrative plans and for the interviews with PHA officials are described in greater detail in the following sections of this report. Data limitations that have implications for the findings presented in this report are also discussed.

Administrative Plans

Section 8 Housing Choice Voucher administrative plans were the primary source of data for this research study. PHAs are required to state their local discretionary policies within their administrative plans.⁵ PHAs must update their administrative plans to reflect any new requirements as directed by HUD and to reflect any changes that might be the result of local circumstances.⁶ The plans are not required to be updated annually, although in practice it appears that many PHAs frequently update their administrative plans to reflect changes in both discretionary and mandatory policies. HUD discourages the inclusion of mandatory policies within the Section 8 Housing Choice Voucher administrative plans, but PHAs functionally use their administrative plans as program guidebooks in which all policies and procedures are transcribed in one document.⁷ The administrative plans are thus a rich source of information about the daily administration of the Housing Choice Voucher program as mandatory and discretionary policies intersect. (See **Appendix A** for a more thorough discussion of PHA administrative plans and issues related to them.)

In total, 131 PHAs were selected for the study's sample, which represented a PHA universe of 1,732 PHAs. The PHA universe excluded all PHAs that operate outside of typical program rules or models. These include Moving-to-Work (MTW) PHAs,⁸ PHAs in territories, and PHAs

⁵ Housing Choice Voucher Program Guidebook, p. 3-1, available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/forms/guidebook.

⁶ Housing Choice Voucher Program Guidebook, p. 3-1.

⁷ Housing Choice Voucher Program Guidebook, p. 3-2; PHA interviews.

⁸ The MTW demonstration program was enacted in 1996 to allow a small number of PHAs the flexibility to experiment with the design and provision of assisted housing. There are three objectives for the MTW demonstration program: (1) reducing costs and increasing cost-effectiveness in the provision of assisted housing; (2) encouraging the self-sufficiency of assisted families; and (3) increasing the housing choices for low-income families. PHAs participating in the MTW demonstration program have several areas of flexibility in their administration of assisted housing programs,

administering state-level programs. In addition, CRS limited the PHA universe for this study to exclude all PHAs with fewer than 100 units, which is consistent with an earlier HUD study, in order to make the sample size for the study manageable.⁹ When selecting PHAs for the sample, CRS ensured that PHAs of all sizes and regions of the country were adequately represented.

CRS attempted to collect the administrative plans from PHAs in a manner that would create the least burden for PHAs. When possible, CRS collected the plans by downloading them from PHA websites. When plans were not available from PHA websites, CRS contacted the PHAs and requested a copy of their current plans. A small number of PHAs were unable to provide a copy of a current administrative plan, and opted instead to answer a brief questionnaire that asked them to describe their PHA's discretionary policies. Two PHAs selected for this study did not supply administrative plans or complete a questionnaire and were represented as missing data within research findings. A later section of this report (see **Appendix A**) discusses the challenges researchers faced in collecting the administrative plans, which were not always readily available for public review.

Interviews

Interviews with PHA officials were the secondary source of data for this research project. A subsample of PHAs that were selected for the first stage of data collection were selected for participation in the interviews. The selection of PHAs for interviews was non-probabilistic and is not representative of either the stratified random sample of PHAs taken for this study or of the entire universe of PHAs that exist nationally. The information collected from the interviews was meant to provide explanation of and context for PHAs' discretionary policies. To ensure that the interviews would serve that purpose, key respondents were identified based on contacts made during the initial stage of data collection. These key respondents were then contacted to request an interview. In order to avoid excluding unidentified key respondents, all PHAs that had not been contacted during the first stage of the data collection process (primarily those PHAs with administrative plans available on their websites) were also invited to participate in interviews. PHA officials who responded with a willingness to participate were then interviewed by phone. During the interviews, PHA officials were asked to provide explanations for several of their discretionary policies that were of interest for this study and, to encourage candor, officials were assured their responses would not be attributed to them. In total, 18 interviews were conducted with PHA officials.

including the authority to combine Section 8 funding with Public Housing operating and capital funds, thus creating one funding stream for housing assistance and development, and the ability to act outside many of the rules for assisted housing programs as established by the U.S. Housing Act of 1937. MTW PHAs enter into a contract with HUD that describes how they will administer their housing programs and which program rules HUD will waive. Although the implementation of the demonstration program began in 1996, PHAs began entering into MTW contracts from 1998 on. The non-systematic implementation of the demonstration program has complicated evaluations of the effectiveness of MTW PHAs' policies. Although evaluations of the program have not determined the effectiveness of the strategies adopted by MTW PHAs in the management of their programs, the demonstration program did allow PHAs the ability to explore various options in the administration of assisted housing programs, which can inform discussions of discretionary authority. There are currently 35 PHAs participating in the MTW demonstration program; the observations of these authorities are available and are an additional source of data for policymakers in their discussions of discretionary authority. HUD provided a report to Congress in 2010 that details the program's challenges and accomplishments: http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_10134.pdf). HUD's MTW website also provides further detail on the demonstration program: http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/mtw.

⁹ Further explanation about the sampling methodology is available in **Appendix B**.

Limitations

Despite the use of generally accepted research methods for this study, there are several limitations to the data collected that have implications for the findings presented in this report. First, the data collected from administrative plans reflect only the stated discretionary policies of PHAs. Some PHAs included in the sample were in the process of updating their administrative plans, while other PHAs did not appear to have updated their plans recently; both scenarios may indicate that the stated policies could differ from the practiced policies. No attempts were made to independently verify PHAs' stated policies. The data collected through the interview process carries the same limitation. PHA officials' explanations of how their policies were developed were not independently verified.¹⁰ Another limitation of the data is that, although PHAs are required to include their discretionary policies within their administrative plans, not all PHAs did so for all of their discretionary policies. In addition, two PHAs selected for the sample did not provide their administrative plans.

Readers should also take into consideration that the data presented within this report reflect CRS's understanding of the Housing Choice Voucher program and CRS's judgment in analyzing information gathered from administrative plans and interviews. At times, PHAs stated their discretionary policies unclearly or in a contradictory fashion; CRS used its knowledge of the program and its best judgment to make determinations of the proper categorization of these policies. It is entirely possible that a knowledgeable individual would categorize ambiguous policies differently. More so, a knowledgeable individual might have developed a different system of categorization, which could have revealed other research findings.

In sum, the findings of this study should be understood as a broad overview of PHA practices rather than a definitive statement on how PHAs administer the Housing Choice Voucher program.

Prior Research

The last major research study on PHAs' discretionary authority was completed by HUD in 2000. HUD's study, *The Uses of Discretionary Authority in the Tenant-Based Section 8 Program: A Baseline Inventory of Issues, Policy, and Practice*, was meant to provide a first look at PHAs' use of the discretionary authority made permanent through QHWRRA and was designed with future program review in mind.¹¹ In its study, HUD sampled 167 PHAs administering local Section 8 Housing Choice Voucher programs and interviewed officials from these PHAs about their discretionary policies. HUD's study focused on several areas of discretion, including tenant selection, occupancy and screening, extending housing opportunities (e.g., encouraging tenants to move to areas without concentrated poverty), and rent policies.¹² In addition to surveying PHAs about their discretionary policies, the HUD study described PHA officials' understanding of the factors that influenced their policy choices.¹³

¹⁰ However, as the purpose of the interviews was to garner a deeper understanding of how discretionary policies were developed, misunderstandings of HUD policy guidance and the discretion afforded under the Housing Choice Voucher program held by PHA officials were noted and have been included throughout the Research Findings sections.

¹¹ U.S. Department of Housing and Urban Development, Office of Policy Development and Research, "The Uses of Discretionary Authority in the Tenant-Based Section 8 Program: A Baseline Inventory of Issues, Policy, and Practice," November 2000, foreword, available at <http://www.huduser.org/Publications/pdf/sec8da.pdf>. Hereinafter referred to as the HUD PHA Discretionary Authority Study (2000).

¹² Ibid, p. ix.

¹³ Ibid, p. ix.

While CRS examined PHAs' use of discretionary authority in a similar fashion, several caveats should be kept in mind when making comparisons between HUD's study and this study. First, the data sources for HUD's study were PHA interviews in which PHAs described their discretionary policies, while in this study PHA administrative plans were the primary resources for data (see the "Data Sources and the Data Collection Process" section earlier in this report and **Appendix A** for more detail on the plans). Second, the regulations and guidance for the Housing Choice Voucher program have changed over time, meaning that the areas of PHAs' discretionary authority, as broadly categorized in this study and in HUD's study, have different constraints today than they did in 2000. Yet, the findings of HUD's study are informative as to how PHAs used their discretionary authority when that authority was first made permanent and do offer a useful perspective on how PHAs' use of their discretionary authority has changed since 2000. Thus, this report makes comparisons, when appropriate, between the HUD study and current research findings in order to shed light upon how PHAs may have changed their use of their discretionary authority since it was first granted.

Research Findings and Implications

Tenant Selection Policies

Local Preferences

PHAs may place applicants upon their waiting lists based upon the date and time of application or through a random selection process (e.g., lottery). PHAs may also use specific household characteristics, which are called "local preferences," to rank families on their waiting lists. This discretion is particularly meaningful in a program where only one in four income-eligible households receives assistance.¹⁴ The discretion to determine local preferences effectively allows PHAs to determine which low-income populations will be served by the Housing Choice Voucher program, as applicants that are not at the top of the waiting list may be unlikely to be selected to receive assistance. Federal regulations direct PHAs to determine waiting list preferences based upon local housing needs and priorities, as determined by the PHA and as demonstrated through generally accepted data sources. However, beyond that guidance PHAs are left to decide how needs should be prioritized in the distribution of vouchers in their communities.¹⁵ There are no limits to the number of local preferences that a PHA may elect and PHAs may assign varying weights to their local preferences. As a result, some local preferences are more of a determining factor than others in deciding which families are selected from the waiting list.

PHAs gained the discretion to establish local waiting list preferences first through an appropriations act in 1996 and later through QHWRA (1998).¹⁶ Prior to 1996, PHAs were required to distribute vouchers to families meeting federal preferences, which addressed hardships such as rent burden at more than 50% of household income; involuntary displacement; and substandard housing, which included provisions for the homeless.¹⁷ After 1996, PHAs were allowed to adopt local preferences including (but not limited to) residency (i.e., families who live

¹⁴ Joint Center for Housing Studies, *The State of Nation's Housing 2011*, June 6, 2011, pp. 28-29, available at <http://www.jchs.harvard.edu/research/publications/state-nation%E2%80%99s-housing-2011>.

¹⁵ 24 C.F.R. 982.207

¹⁶ U.S. Department of Housing and Urban Development, Office of Policy Development and Research, "The Uses of Discretionary Authority in the Tenant-Based Section 8 Program: A Baseline Inventory of Issues, Policy, and Practice," November 2000, p. 7.

¹⁷ *Ibid.*, p. 7.

or work in PHA jurisdiction); working families; victims of domestic violence; single persons who are elderly, displaced, or homeless; and persons with disabilities. Commonly used local preferences are described in **Appendix C**.

Findings

The HUD PHA Discretionary Authority Study (2000) showed that PHAs used their newfound discretion in a more limited fashion than PHAs do today. At the time of the HUD study, 29% of PHAs elected to place applicants on their waiting lists solely based on the date and time of application, doing away with preferences altogether. An additional 12% of PHAs placed applicants on their waiting lists based on the old federal preferences, while 30% adopted local preferences in addition to the old federal preferences and 30% adopted local preferences in place of the old federal preferences. In other words, approximately 41% of PHAs did not elect to adopt local preferences in 2000. Today, only 9% of PHAs sampled placed applicants on the waiting list based upon the date and time of application only and none of the PHAs within the sample relied solely on the old federal preferences. However, approximately 26% of PHAs incorporated some part of the old federal preferences into their local preferences.

The data collected for this study show that PHAs have adopted a wide range of local preferences. (See **Table 1**.) Common local preferences include residency (i.e., families who live or work in a PHA's jurisdiction), working families, persons with disabilities, domestic violence victims, elderly, displaced for disaster, homelessness/at-risk of homelessness, veteran/military, families (i.e., households of two or more, households with children), witness protection program, displaced through government action, previously terminated due to insufficient funding, hate crime victims, and displaced through landlord action.¹⁸ In addition, 44% of PHAs sampled had one or more preferences that did not fall into the listed preferences.

Table 1. Common Local Preferences

Preferences	# of PHAs	% of PHAs
Person with disabilities	61	47%
Residency (live or work)	54	41%
Elderly	52	40%
Displaced by government action	49	37%
Displaced by disaster	46	35%
Domestic violence	41	31%
Homeless/ at-risk of homelessness	38	29%
Reference to old federal preferences	34	26%
Working families (including training)	33	25%
Veteran/military	33	25%

¹⁸ Please note that PHAs that do not prioritize the housing assistance for a particular group through a local preference may still provide targeted assistance to that group; characteristics of households that PHAs serve cannot be captured through local preference data alone. For instance, a PHA may not have a homeless preference, but may have received targeted funding from HUD to assist the homeless. Thus, the homeless would be one of the groups most likely to be assisted despite the lack of local preference.

Preferences	# of PHAs	% of PHAs
Previously terminated for insufficient funds	24	18%
Witness protection/avoid reprisals	20	15%
Displaced by landlord action	15	11%
Family (i.e., non-singles)	12	9%
Hate crime victim	10	8%

Source: CRS study of PHA discretionary authority.

Notes: According to program regulations, a PHA's residency preference category must apply to households that live or work in a PHA's jurisdiction. PHAs may include workforce training as an eligible activity for the residency preference. Other definitions of the preferences listed in this table can be found in **Appendix C**.

The data in this table are not cumulative. In addition, this table only displays the common local preferences as typed by CRS. Please note that 9% of PHAs organized their waiting lists based solely on the date and time of application, and that for 5% of the PHAs in the sample CRS was unable to collect data on local preferences. In addition, 44% of PHAs had local preferences categorized as "other."

Table 1 shows the frequency of the common local preferences; it does not show the frequency with which PHAs adopted multiple local preferences. Collected data showed that 63% of PHAs placed applicants on the waiting list based on three or more of the common local preferences; 23% of PHAs placed applicants on the waiting list based on seven or more of the common local preferences; and 6% of PHAs placed applicants on the waiting list based on 10 or more of the common local preferences. Only 11% of PHAs had one common local preference and another 11% had two common local preferences (an additional 2% of PHAs had only one preference, but that preference was not on this list of "common" local preferences).¹⁹

It should be noted that one of the most common local preferences, the residency preference (adopted by 41% of PHAs), generally limits access to vouchers to those living or working in the PHA's jurisdiction. Although many PHAs had multiple preferences, the weighting of preferences can mean that unless a household qualifies for one of the most heavily weighted preferences, the household has little chance of receiving a voucher.²⁰ For instance, the data collected show that at least 18% of PHAs had a residency preference as their most heavily weighted or only local preference. In these jurisdictions, depending on the weighting of the other preferences, only applicants that live or perhaps work inside of the jurisdiction are likely to be chosen from the waiting list. As 62% of PHAs that use local preferences assigned varying weights to these preferences, it calls into question the meaning of having multiple preferences.

Managing Local Preferences

During discussions with CRS, PHA officials were asked to explain their local preference policies. PHA officials explained that multiple local preferences made the waiting list difficult to manage, but that the number of local preferences grew over time and in response to community concerns. Several PHA officials stated that there was pressure from their boards, public officials, and

¹⁹ Other local preferences were frequently found within PHA administrative plans, but they did not fit easily into the typology of preferences developed by CRS. For instance, one PHA in the sample had a local preference "special lead-safe housing preference for families with children," for families displaced due to the PHA's HUD-funded Lead Hazard Control program.

²⁰ Some PHAs with multiple local preferences aggregate their local preferences and some PHAs assign equal weights to each local preference; in both of these cases, *each* local preference could influence which applicants are eventually selected from the wait list.

nonprofits to serve particular groups. In turn, these PHAs found it challenging to keep the preferences at a manageable number. Several PHA officials thought they had too many local preferences, but doubted that they would be able to reduce the number due to community concern. While PHA officials were concerned at the number of local preferences used to manage waiting lists, they also stressed that the local preferences reflected community needs and were often the result of ongoing conversations at the PHAs and within their communities. More so, several PHA officials mentioned the flexibility that local preferences provided in meeting immediate needs within a community. For example, one PHA established a local preference to meet housing needs caused by the closing of a local mobile home community, while another established a local preference in response to being unable to provide housing to a local resident who lost his home in a fire. However, PHA officials also stated that only the most heavily weighted preferences were meaningful.

Issues of Fairness

On the other hand, some PHA officials believed that it was unfair to place the needs of one group over another. One PHA official stated that they tried to limit the number of local preferences used to manage the waiting list because “everybody has critical needs ... it is too hard to pick and choose.” Another PHA official stated that they wanted the working poor to have the opportunity to receive a voucher too and used special purpose vouchers (i.e., vouchers competitively awarded by HUD for particular groups such as veterans) as the mechanism to meet the needs of particular groups. In addition, a PHA official shared that the PHA had abandoned its plan for local preferences after being advised that if the waiting list were mismanaged due to multiple local preferences, it would create a liability for the PHA. Finally, several other PHA officials pointed out that some local preferences were easy to manipulate and in turn “just seemed to be a way to bypass the waiting list.” The local preference for the homeless or for those at-risk of homelessness was most often cited in interviews as being difficult to verify; several PHA officials stated that they thought that applicants would be willing to stay at a shelter or to double-up in order to qualify for the homeless preference.

“Other” Local Preferences

As noted previously, 44% of the sampled PHAs had local preferences that did not easily fall into the typology of common local preferences developed for this study. These were categorized as “other local preferences.” For the most part, this “other local preferences” category reflects administrative preferences and preferences that might serve a particular population but in a more restricted fashion than is reflected in the common local preferences. For instance, one PHA had a preference for families that both live and work within the PHA’s area; this preference does not fit easily into the residency preference category, which would allow anyone living *or* working in the area to claim the preference. It also does not fit in the working family category, as a family must live and work in the PHA’s area. Additional examples of narrow local preferences that were included under the category of “other” include single-parent households with children under the age of six, families not living in lead-safe housing, grandparents as parents, and foster youth aging out of the child welfare system, among others.

Local preferences that created administrative flexibilities between housing programs also fell into the “other” local preference category. PHAs had preferences for those graduating from Shelter-Plus-Care (which is a HUD homeless program) and for those who were being displaced from another housing program due to loss of funding or administrative changes. Some PHAs had a local preference that allowed for the settlement of litigation. The local preferences categorized as “other local preferences” illustrate the administrative flexibility that PHAs have to meet specific

needs in their communities and in their operations, but they also make it difficult to summarize which income-eligible groups the Housing Choice Voucher program serves.²¹

Implications

CRS found that PHAs have widely varying local preference policies, which underscores that there are widely varying local determinations about which populations are most in need or deserving of housing assistance. While each year it is possible to say broadly whom the program serves, only a further examination of the local preferences in relation to the movement of PHA waiting lists would indicate which at-risk populations are most likely to receive a voucher. With this information, it would be possible to evaluate if the application of local preferences aligns with federal policy goals.

Another possible issue was raised during interviews with PHAs regarding the use of preferences and actual or perceived racial discrimination. One PHA official described an instance in which a former official at the PHA had unsuccessfully advocated for a stringent residency preference that the interviewed official believed would have had the effect of reducing the number of racial minorities in the community. Another PHA official thought that it was unclear when a residency preference might be considered discriminatory and the PHA official believed that HUD may bring fair housing actions against some PHAs with residency preferences. As mentioned earlier, 41% of PHAs sampled had residency preferences. Notably, some PHAs define residency preferences strictly in terms of living within the jurisdiction while some PHAs have a more expansive definition extending the residency preference to those who work or are pursuing job training and education in the jurisdiction.²² While a residency preference is not indicative of racial discrimination, its effect on access to the HCV program for racial minorities may be a topic for further research.

Special Admissions

PHAs have the ability to bypass their established waiting list procedures and admit families directly to the HCV program through their special admissions procedure. Regulations state that PHAs may specially admit families when HUD awards the PHA program funding targeted for families living in specified units that had been subsidized through another assisted housing program.²³ Examples of families targeted for such funding include

- a family displaced because of demolition or disposition of a public housing project;
- a family residing in a multifamily rental housing project when HUD sells, forecloses, or demolishes the project;

²¹ A final type of local preference was categorized as other: local preferences that on their face are in violation of program regulations. For example, some PHA plans reported preferences for participants in the Family Self-Sufficiency program, which is not an allowable preference. Since this preference would be in violation of program regulations, it is possible that PHAs with such a stated preference do not actually follow what is stated in their administrative plans.

²² The regulation that allows for a residency preference states that the residency preference must apply to anyone living, working, or hired to work within the given residency preference area (which cannot be smaller than a county or municipality). PHAs have the option of granting eligibility for the residency preference to those receiving education or training within the residency preference area. While multiple PHAs did not describe their residency preference to include those working or hired to work in the residency preference area, it is possible that these PHAs apply the residency preference according to the regulation and that their plans are unclear. (24 C.F.R. 982.207)

²³ 24 C.F.R. 982.203

- a non-purchasing family residing in a project subject to a homeownership program;
- a family displaced because of mortgage prepayment or voluntary termination of a mortgage insurance contract;
- a family residing in a project covered by a project-based Section 8 housing assistance payment (HAP) contract at or near the end of the HAP contract term; or
- a non-purchasing family residing in a HOPE 1 or HOPE 2 project (which are public housing revitalization projects).

The special admissions procedure is thus a mechanism to re-house tenants who would otherwise be displaced due to HUD program action. In addition, PHAs may establish special admission procedures in cases where HUD provides funding for a specific purpose, such as desegregation.²⁴

Findings

PHAs generally allowed for special admissions within their administrative plans in cases where HUD provided funding for specified units or special purposes. Specifically, 77% of sampled PHAs had special admission procedures that gave them the flexibility to administer any HUD-awarded funding for specified units or for special purposes. However, 16% of PHAs did not have a special admissions procedure in place.

Some PHAs also used the special admission procedures to serve particular groups, such as those displaced by disasters. Thirteen percent of PHAs allowed special admissions for particular groups. These special admissions categories included (but were not limited to) displaced by natural disaster, witness protection program, lawsuit settlement, displaced by government action, displaced by landlord action, families previously terminated for insufficient funding, persons with disabilities, and the homeless. This usage of the special admissions procedure does not seem to be mentioned in the program regulations.

Implications

On the whole, PHAs used the special admissions flexibility in a narrow fashion and the practice of using this procedure to meet the needs of a particular group was not widespread.²⁵ However, some PHAs appeared to be using the special admissions procedures in ways not contemplated by regulation. Because the proper admittance of applicants to the program is a key component of ensuring that program funds are used for their intended purposes, further guidance from HUD on the use of the special admission procedures may be useful.²⁶

²⁴ 24 C.F.R. 982.54 d(3)

²⁵ There appears to be some confusion among PHAs about what constitutes a special admission. Within the special admissions section of the administrative plan, some PHAs included special admission procedures for groups receiving targeted funding (e.g., VASH, which is a program that serves homeless veterans). This is unnecessary under the regulations for targeted funding.

²⁶ For example, see a recent audit finding against a PHA that was found to have not properly managed its waiting list, including not properly using special admissions: HUD IG Audit Report 2011-CH-1006, <http://www.hudoig.gov/pdf/auditreports/IL/ig1151006.pdf>.

Screening and Denial of Assistance

The statute governing the Housing Choice Voucher program *requires* PHAs to deny assistance to some categories of families and leaves PHAs the *discretion* to deny assistance to other categories of families. Generally, denial of admission policies address families with histories of unmet financial obligations and criminal activity.²⁷ In addition, federal law permits PHAs to screen families for “family behavior or suitability for tenancy.”²⁸ While different terms, such as “denial of admission” and “screening,” are used in federal law to refer to these types of policies, they effectively serve the same purpose: limiting some families’ access to assistance.

PHAs are required under federal law to deny admission to persons subject to lifetime registration on a state sex offender registry²⁹ and to persons convicted of producing methamphetamines on the premises of federally assisted housing.³⁰ PHAs are also required to deny assistance to tenants who were evicted from federally assisted housing within the last three years for drug-related criminal activity, unless the tenant has completed a drug rehabilitation program or the circumstances leading to the eviction no longer exist (i.e., the offending tenant is no longer a member of the household).³¹

Federal law requires PHAs to establish policies to deny admission to households that include tenants who are currently using drugs illegally or whose pattern of drug and alcohol abuse interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.³² Federal law explicitly lists other categories of activity that *may* be grounds for denial of admission. For example, the law notes that PHAs may deny admission to households if a member is engaged in or has, during a reasonable period of time prior to admission, been engaged in violent or drug-related criminal activity.³³

HUD regulations allow PHAs to take into consideration all relevant circumstances when implementing their denial of admission policies, including the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.³⁴

In addition to developing denial of admission policies, PHAs are permitted to screen tenants for suitability and family behavior. Prior to enactment of QHWRA in 1998, screening for family behavior and suitability was solely the responsibility of a landlord leasing to an assisted tenant.³⁵ Post-QHWRA, property owners wishing to rent to HCV tenants are still responsible for tenant

²⁷ According to 24 C.F.R. 982.552(b), PHAs are also required to deny assistance if any member of the family fails to sign and submit consent forms for obtaining necessary information, fails to provide adequate evidence of citizenship or eligible immigration status, or fails to meet eligibility requirements related to student status.

²⁸ The statutory provisions governing tenant screening can be found at 42 U.S.C. 1437f(o)(6)(B); the regulations can be found at 24 C.F.R. 982.307.

²⁹ 42 U.S.C. 13663

³⁰ 42 U.S.C. 1437n(f)(1)

³¹ 42 U.S.C. 13661(a)

³² 42 U.S.C. 13661(b)(1)

³³ 42 U.S.C. 13661(c)

³⁴ 42 U.S.C. 13661(b)(2) and 24 C.F.R. 982.552(b) (C)(2).

³⁵ See 24 C.F.R. 982.307 (1995 edition), which stated “At or before HA approval to lease a unit, the HA must inform the owners that the HA has not screened the family’s behavior or suitability for tenancy and that such screening is the owner’s own responsibility.”

screening; however, PHAs may choose to do their own additional screening. According to the Housing Choice Voucher Program Guidebook:

Performing screening on program applicants and denying program participation for those who have poor rental histories may be a good marketing tool within the community, and may potentially reduce the number of terminations of assistance for program and lease violations.³⁶

Given the aforementioned statutes and regulations, PHAs have two main areas in which they have discretion when it comes to denying assistance to otherwise eligible families:

1. they can determine which behaviors to consider, and whether and how to consider mitigating circumstances; and
2. they can determine the period of ineligibility and how to obtain the information necessary to make a determination.

The issue of how PHAs are using their policy discretion in this area has been of interest to policymakers. Some low-income housing advocates have been critical of the types of discretionary screening and denial of admission policies adopted by some PHAs³⁷ and proposals have been made to limit the scope of discretionary screening policies.³⁸ Conversely, others have expressed concern that some PHAs are not instituting policies sufficient to protect communities from bad actors.

Findings

Virtually all of the PHAs in the study had policies stating that screening tenants for suitability is the responsibility of the landlord. Only three PHAs reported having a policy of screening tenants for suitability. While very few PHAs reported having a policy of screening for suitability, almost all PHAs reported having policies that deny assistance to families for various past behaviors.

From the findings of this study, it appears the most common types of criteria being used by PHAs to determine whether to deny a household assistance involved evaluating past financial obligations and prior criminal activity.

Financial Obligations

The majority of PHAs in the study included owing money to a PHA among the categories of behaviors that would lead to denial of admission. This category of denial of assistance is listed among the possible denials of admission in program regulations. In some cases, PHAs only considered the debts that were owed to them, but in most cases, PHAs evaluated whether an applicant owed a debt to any PHA. (See **Table 2.**)

Table 2. Policies Related to Unpaid Debt to PHAs

Categories	# of PHAs	% of PHAs
No stated policy	27	21%

³⁶ U.S. Department of Housing and Urban Development, Housing Choice Voucher Program Guidebook (7420.10G), p. 5-40.

³⁷ For example, see Testimony of Barbara Sard, Vice President for Housing Policy for Center on Budget and Policy Priorities, Before the House Financial Services Subcommittee on Housing and Community Support, June 23, 2011.

³⁸ For example, the Section 8 Voucher Reform Act of 2009 (H.R. 3045, 111th Congress), which was approved by the House Financial Services Committee, contained a provision to limit discretionary screening to “criteria that are directly related to an applicant’s ability to fulfill the obligations of an assisted lease and shall consider mitigating circumstances related to such applicant.”

Categories	# of PHAs	% of PHAs
Policies involving debt to any PHA	92	70%
Policies involving debt to current PHA	4	3%
Missing data	8	6%
Total	131	100%

Source: CRS study of PHA discretionary authority.

One PHA official who was interviewed mentioned recently revisiting the PHA’s policies regarding families with unpaid debt to PHAs. The official mentioned a list, maintained by a private company and purportedly used by most PHAs, that provides information on tenants who have unpaid obligations to PHAs.³⁹ The official reported that, prior to their recent policy change, families with bad debts from the PHA would remain on the list indefinitely. The PHA recently decided, with the help and encouragement of their local legal aid office, to remove tenant information after seven years. They chose seven years to conform to general standards regarding how long debts remain on consumer credit reports. The PHA official felt that it did not make sense for someone to be on the list for a \$50 debt that was 20 years old.

No PHA plans specifically referenced this list. However, over one-third of PHAs in the study reported conducting a credit check on applicants. Some PHAs reported using the credit check to confirm information about the household’s composition or income, but others use the credit check to find court-ordered judgments against families. (See **Table 3.**)

Table 3. Credit Check Policies

Categories	# of PHAs	% of PHAs
Policy to conduct credit check	44	34%
No stated credit check policy	77	59%
Missing data	10	8%
Total	131	100%

Source: CRS study of PHA discretionary authority.

Criminal Background

All PHAs in the study that reported information on crime-related denials of assistance repeated or referenced some or all of the aforementioned HUD guidelines about crime-related restrictions. PHA policies varied in terms of what specific crimes they considered and whether they reported that they “shall” deny assistance to applicants involved with certain crimes or whether they “may” deny assistance. It is important to note that, since PHAs have the discretion to consider mitigating circumstances, a policy that states that the PHA shall deny assistance may still allow for case-by-case discretion.

The most common type of policy adopted among PHAs included in the study was that the PHA *shall* deny assistance based on violent or drug-related criminal activity and other criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons in the immediate vicinity. Over half (60%) of PHAs in the sample had this

³⁹ The official referred to the list as the “Happy List,” which appears to be in reference to the name of the company that developed it, Happy Software. For more information, see fact sheet, at https://www.happysoftware.com/downloads/pdf/TenantCheck_FactSheet.pdf.

type of policy. The second most common policy stated that the PHA *may* deny assistance (18%) based on violent or drug-related criminal activity and other past behaviors. A smaller number of PHAs had similar policies but limited them to violent and drug-related criminal activity only (11% shall; 3% may). About 8% of PHAs had missing or incomplete information on this topic in their PHA plans. (See **Table 4**.)

The level of specificity PHAs provided in terms of the type of criminal activity also varied. For example, 10 PHAs in the sample had policies specifically addressing the crime of murder. Several PHAs also had policies specifically addressing sexually based crimes and assaults or other crimes against PHA staff.

Table 4. Crime-Related Denial of Admission Policies

Categories	# of PHAs	% of PHAs
May deny, violent or drug-related activity	4	3%
Shall deny, violent or drug-related activity	14	11%
May deny for violent, drug-related, or other criminal activity	24	18%
Shall deny for violent, drug-related, or other criminal activity	78	60%
Missing	11	8%
Total	131	100%

Source: CRS study of PHA discretionary authority.

HUD regulations state that the PHAs may consider a “preponderance of evidence”—not limited to arrests and convictions—when determining if there has been a violation sufficient to deny or terminate assistance. While most PHA plans did not provide enough specificity to determine precisely what evidence they consider, many included references to the types of activities and evidence they *may* take into account: 19% included the regulatory “preponderance” language and 75% made specific reference to arrests and convictions. (See **Table 5**.)

Table 5. Evidence Policies

Categories	# of PHAs	% of PHAs
Policies involving arrest or conviction	77	59%
Policies involving arrest or conviction and preponderance of evidence	21	16%
Policies involving preponderance of evidence	4	3%
No specified policy	18	14%
Missing	11	8%
Total	131	100%

Source: CRS study of PHA discretionary authority.

PHA policies varied widely in terms of how far back they looked for disqualifying behavior when evaluating tenants. Some PHA plans did not specify how far back they looked for evidence of disqualifying behavior (25%, including those missing data). Some PHA plans only specified one time period for all crimes and behaviors; other PHA plans only specified one time period, but it applied only to a specific category of crime or behavior. Roughly half of the PHAs in the sample

reported using a single time period. (See **Table 6.**) Of those, the most commonly reported policy was a five-year look-back period, but some PHA plans referenced periods of one, three, seven, and 10 years.

About 22% of PHA plans referenced using multiple look-back periods, generally varying the amount of time depending on the crime or behavior. In these cases, the look-back periods varied from as little as one year to as long as 10 years, and in some cases, over an applicant's lifetime. For example, several PHAs had specific policies relating to the crime of murder, which included look-back periods ranging from seven years to over a full lifetime. One PHA reported a ban related to failing to meet financial obligations that involved a look back of 10 years; this same PHA had a look-back period of five years for felony crimes.

Table 6. Policies Related to Look-Back Periods

Categories	# of PHAs	% of PHAs
One look-back period	69	53%
Multiple periods	29	22%
No specified period	22	17%
Missing data	11	8%
Total	131	100%

Source: CRS study of PHA discretionary authority.

Eighty-five percent of PHAs reported conducting criminal background checks on applicants, with varying levels of specificity about the source of the data they use (local, state, or federal sources). About 18% of PHAs reported having a policy of conducting fingerprinting, generally if a criminal background check had been inconclusive. Among those PHAs that use criminal background checks, the majority run the checks on all adult household members; however, about 10% reported that they run checks on household members under the age of 18, including household members as young as ages 14 and 15.

HUD's 2000 study of PHA discretion looked at the use of criminal background checks by PHAs. HUD's study found that less than 50% of PHAs reported using formal background checks (20% reported not using a background check and 32% reported using an informal or trigger-based approach). This would appear to be a change in policy, in that it seems more PHAs are using formal background checks today than were in 2000. Comments made by several PHA officials in interviews with CRS supported this finding. They noted that they are increasingly using criminal background checks, especially now that they are available online.

In interviews with PHA officials, most told CRS that, while they have written guidelines, they assess applicants with criminal backgrounds on a case-by-case basis. Several PHA officials noted that they liked the flexibility to weed out prospective problem tenants, but that they also liked to give people a second chance. One official mentioned that the PHA had concerns about serving certain ex-offenders but had worked with the local legal aid office to develop a Memorandum of Understanding they require certain tenants to sign that conditions their receipt of a voucher on ongoing participation in certain supportive services. The PHA noted that this policy allowed the PHA both to serve the neediest families but also protect itself by allowing more ability to terminate assistance if problems arose. Another official noted that the PHA had changed its policy in recent years to "lower the bar," because in the appeals process during which applicants can challenge a denial of admission, the PHA discovered it was comfortable with a more lenient approach than its previous policy would have permitted.

Some of the PHA officials interviewed indicated that their PHAs have adopted stricter rules that allow little-to-no room for consideration of circumstances. Generally, these officials indicated that the reason for their strict policies was to combat negative perceptions about the PHA, the program, and the program participants. One official noted that every time the PHA had proposed loosening its strict criminal background requirements, the currently assisted tenants opposed the proposal. A similar sentiment was expressed by an official who noted that the Resident Advisory Board for the PHA had been supportive of recent initiatives to make restrictions stricter in the community. Another PHA official noted that the rental market in the community was tight enough that the PHA worried that if it loosened standards, it would “burn out” its already short supply of landlords willing to accept vouchers. The same PHA official stated that the result of “lowering the bar” was that the PHA had a policy that was more liberal than that of many local landlords. In turn, this PHA’s voucher holders were not always able to find units to lease and returned the vouchers to the PHA unused.

Several PHA officials specifically mentioned that they had reconsidered their policies in recent years in response to HUD guidance requesting that PHAs assess how they are serving ex-offenders. However, most of the officials who referenced this initiative expressed concern with what it could mean for the integrity or reputation of their programs. One official noted that there was a lot of gang activity in their community and that the PHA was concerned that loosening standards could lead to more “bad actors” in the program.

Several PHA officials noted that the issue of crime- and drug-related denials did not come up that often. Only one official indicated that the PHA’s strict crime- and drug-related screening policies resulted in frequent denials of admission. The official thought that probably 20% of applicants were denied because of past criminal activity. Another official who cited a 20% denial rate indicated that most of the denials were related to bad debt or unmet financial obligations rather than criminal activity.

The sentiments expressed by PHA officials in interviews about the appropriate length of look-back periods varied as one might expect from the variety of policies found in the study. Some officials reported having shortened their look-back periods in recent years, whereas others have lengthened them. One PHA official stated that their policy is to look back as far as possible because they feel that past history is the best predictor of future behavior. Another PHA official stated that their policy—a five-year look back—did not go further because they did not want to punish a tenant for something that had happened 10 years ago, noting that people can change. Another PHA official stated that the PHA is not too concerned about what happened more than three years ago as long as the tenant is honest about it on their application; what the PHA is really screening for is whether an applicant is lying on their application.

Several PHA officials, when asked about their crime- and drug-related policies, indicated only that they follow HUD guidelines or a purchased plan from a consultant.⁴⁰ In some cases, the interviewees seemed either unaware or uninterested in the range of discretion provided in this policy area.

Implications

PHA policies about how criminal backgrounds are evaluated and taken into account appear to vary widely in terms of periods of ineligibility, what activities lead to ineligibility, and the manner

⁴⁰ Many PHA plans used in this study appeared to have been purchased from consulting companies. For more information, see **Table A-1** and accompanying discussion in **Appendix A**.

in which background checks are performed. This means that similarly situated families may be treated differently depending on where they live.

PHAs' written policies regarding how they will evaluate a family member's prior criminal activity are often not explicit. This leaves PHAs with the discretion to evaluate families on a case-by-case basis and provides an opportunity for administrators to consider a family's circumstances. This flexibility seems to be valued by program administrators. However, it may also present challenges. Ambiguous policies and inconsistent application could leave program administrators open to conflict with applicants and their advocates.

Lack of specificity in written policies may also have implications for tenants. Tenants may benefit from administrators' abilities to use judgment and consider circumstances when evaluating them for assistance. However, tenants may perceive this flexibility as problematic if PHA actions are seen as biased, unfair, or inconsistent.

It appears that owing unpaid debts to a PHA may significantly limit a family's future access to assistance, given the policies stated in PHA plans. It remains unclear what standards PHAs use when reporting families as having unpaid debts and how that information is used to evaluate program applicants.

Finally, it appears that recent federal policy initiatives designed to support ex-offenders may be receiving varying levels of support from PHAs, depending on the perceptions of local administrators, their understanding of their policy discretion, and their sense of their local communities' priorities.

Termination of Assistance

Federal law requires PHAs to terminate HCV assistance to a family evicted from housing assisted under the program for a serious violation of the lease.⁴¹ Because eviction decisions are made by the private landlords leasing to tenants, much of the discretion about when to evict is left to landlords rather than PHAs. However, PHAs have discretion about whether an eviction is considered a "serious violation of the lease,"⁴² and whether to terminate assistance for families for other reasons. While federal law establishes some mandatory grounds upon which PHAs must terminate assistance, the law leaves discretion to PHAs about whether to terminate assistance in most circumstances. As in the case with policies to deny admission, most of the discretionary termination policies are tied to criminal activity.⁴³

Federal law requires PHAs to terminate assistance to tenants convicted of producing methamphetamines on the premises of federally assisted housing.⁴⁴ Federal law does not require PHAs to terminate assistance to persons subject to lifetime registration on a sex offender registry, but HUD guidance encourages PHAs to adopt such policies.⁴⁵ PHAs are also required to adopt policies that allow for the termination of assistance to households including tenants who are currently using illegal drugs or whose pattern of drug and alcohol abuse interferes with the health,

⁴¹ 24 C.F.R. 983.552

⁴² 42 U.S.C. 1437n(f)(2)

⁴³ According to 24 C.F.R. 982.552(b), PHAs are also required to terminate assistance if any member of the family fails to sign and submit consent forms for obtaining necessary information, fails to provide adequate evidence of citizenship or eligible immigration status, or fails to meet eligibility requirements related to student status.

⁴⁴ 42 U.S.C. 1437n(f)(2)

⁴⁵ See HUD Notice PIH 2009-35(HA).

safety, or right to peaceful enjoyment of the premises by other residents.⁴⁶ A separate section of the governing statute requires that certain criminal activities serve as cause for termination of assistance,⁴⁷ including any criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents in the immediate vicinity, and status as a fugitive felon.⁴⁸ Any drug-related or violent criminal activity on or near the premises engaged in by a tenant, member of the tenant's household, or guest or other person under the tenant's control is cause for termination of tenancy.⁴⁹

In all of the cases in which federal law requires the adoption of policies that *allow for* or make *cause for* termination of tenancy, the law does not go so far as to *require* the termination of tenancy (except in the case of production of methamphetamines on federally assisted property). Instead, discretion is left to the PHAs as to whether and when to pursue termination of assistance if these circumstances arise. Further, as is the case with denial of admission, program regulations allow PHAs to take into consideration all relevant circumstances when implementing their policies, including the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.⁵⁰

Findings

The most common type of policy adopted among PHAs included in the study was that the PHA *shall* terminate assistance based on violent or drug-related criminal activity and other criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons in the immediate vicinity. Over half (53%) of PHAs in the sample had this type of policy. The second most common policy was similar, but rather than stating that the PHA *shall* terminate assistance based on the aforementioned factors, the policy stated that the PHA *may* terminate assistance (31%). A smaller number of PHAs had similar policies but limited them to violent and drug-related criminal activity, excluding the other criminal activity category (8%). About 9% of PHA plans had missing or incomplete information on this topic. (See **Table 7**.) It is important to note when considering these findings, however, that since PHAs have the discretion to consider mitigating circumstances, a policy that states that the PHA shall terminate assistance may still allow for case-by-case discretion.

⁴⁶ 42 U.S.C. 13662(a)(1) and (2)

⁴⁷ All of these rules include special provisions designed to protect victims of domestic violence, dating violence, and stalking.

⁴⁸ 42 U.S.C. 1437f(d)(1)(B)(v)

⁴⁹ 42 U.S.C. 1437f(o)(7)(D)

⁵⁰ 42 U.S.C. 13661(b)(2); 24 C.F.R. 982.552(C)(2)

Table 7. Crime-Related Termination Policies

Categories	# of PHAs	% of PHAs
May terminate, violent or drug-related activity	1	1%
Shall terminate, violent or drug-related activity	9	7%
May terminate for violent, drug-related, or other criminal activity	40	31%
Shall terminate for violent, drug-related, or other criminal activity	69	53%
Missing	12	9%
Total	131	100%

Source: CRS study of PHA discretionary authority.

In interviews, several PHA officials expressed feeling a tension between wanting flexibility in their termination policies and wanting fair, clear, and consistent policies. Several PHA officials described having made their policies more detailed in recent years. Some PHA officials referenced making their policies more specific in response to challenges of terminations by local legal aid attorneys. Citing this tension with legal aid, one PHA official indicated the agency would like more concrete guidance from HUD. Another PHA official gave an example of having to change their policy to make possession of drug paraphernalia grounds for termination in response to a situation with a specific tenant. One interviewee noted that having flexible policies can help a PHA stay out of trouble but can also get a PHA into trouble.

Implications

Similar to the findings related to PHA denial of admission policies, PHAs' policies regarding what may be considered cause for termination of tenancy are not definitively stated in their administrative plans. This leaves administrators discretion to account for family circumstances, which appears to be desirable to some administrators. Conversely, ambiguous policies can leave PHAs in a position where they may face legal challenges for their decisions. From the perspective of assisted tenants, having unclear policies and discretion left to program administrators may be considered beneficial or problematic, depending on whether or not a local PHA is considered to be fair in its implementation.

Income and Rent Policies

Minimum Rent

In the Housing Choice Voucher program, families are required to make a contribution toward their housing costs, an amount referred to as the total tenant payment.⁵¹ Federal housing policy generally considers housing costs "affordable" to a low-income family if they account for no more than 30% of a family's income. Thus, the total tenant payment in the voucher program is generally calculated as 30% of a family's monthly adjusted income.⁵² However, under the terms of QHWA, PHAs have the discretion to set a minimum rent to be paid by a tenant at an amount

⁵¹ Housing Choice Voucher Program Guidebook, p. 6-1.

⁵² The calculation is actually somewhat more complicated, as families are required to pay the greater of 30% of adjusted gross income, 10% of gross income, the "welfare rent," or the minimum rent set by the PHA.

between \$0 and \$50 per month.⁵³ Where minimum rents have been set, the lowest-income families could be required to pay greater than 30% of family income toward their housing costs. QHWRRA also gave tenants the right to request a hardship exemption if they are unable to meet the minimum rent and granted tenants a 90-day protection from eviction when requesting a hardship exemption.⁵⁴

The minimum rent has been of interest to policymakers in recent years. There have been calls from both Members of Congress and HUD to increase the maximum minimum rent and/or make the minimum rent mandatory. Some proposals have specifically referenced increasing the minimum rent threshold to account for inflation. Increasing the minimum rent has the potential to decrease the federal cost of the program. However, any estimates of savings must be considered along with the possibility of increased hardship exemptions and the administrative costs of the associated hearings.

Findings

The HUD PHA Discretionary Authority Study (2000) concluded that many PHAs struggled in determining the proper minimum rent amount as they balanced the hope of collecting additional revenue with limiting the administrative cost of hardship exemption hearings. HUD's 2000 study showed that 41% of PHAs set their minimum rents at \$50, 44% of PHAs set their minimum rents at \$25, and 15% of PHAs set their minimum rent at \$0.

In the current study, CRS found that the sampled PHAs continued to have concerns about the level of the minimum rent as it related both to the administrative cost of hardship exemptions and to the circumstances of their tenants. However, CRS also found that the majority of PHAs had selected the maximum minimum rent allowed. Seventy percent of PHAs set their minimum rent at \$50 per month. Of the remaining sampled PHAs, 14% had a minimum rent of \$0 per month, 9% had a minimum rent of \$25 per month, and 7% did not provide data on the minimum rent. (See **Table 8.**)

Table 8. PHA Minimum Rent Policies

PHA Minimum Rent (per month)	# of PHAs	% of PHAs
\$50	92	70%
\$25	12	9%
\$0	18	14%
Missing data	9	7%
Total	131	100%

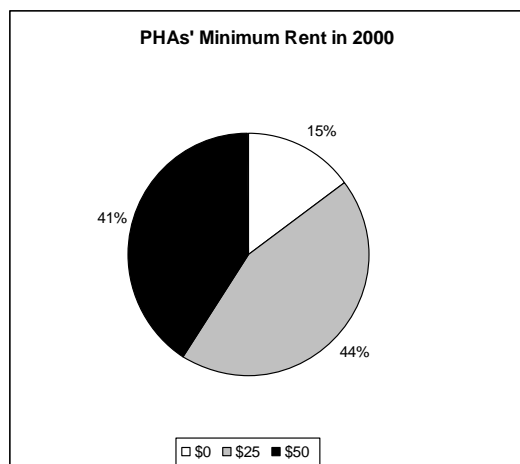
Source: CRS study of PHA discretionary authority.

The data collected by CRS suggest that PHAs may have used their existing discretion to adjust their minimum rents for inflation and other changes in their local housing market and client base. Comparing the HUD study's results to the CRS data indicates that approximately one-third of PHAs have increased their minimum rents from \$25 to \$50 since 2000. It is also notable that the number of PHAs offering a minimum rent of \$0 has remained steady. (See **Figure 1** and **Figure 2.**)

⁵³ Section 507

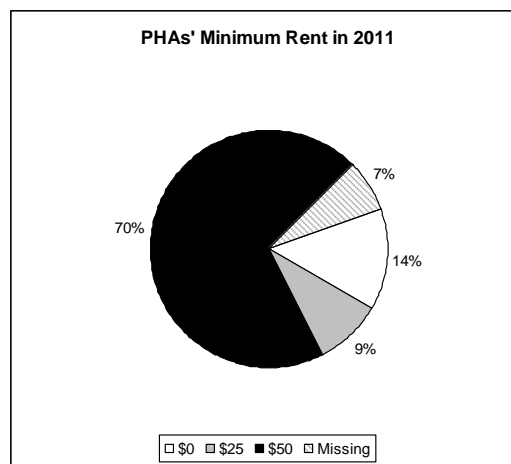
⁵⁴ Section 507

Figure 1. Minimum Rent Policies, 2000



Source: Chart prepared by CRS based on data from HUD's PHA Discretionary Authority Study (2000).

Figure 2. Minimum Rent Policies, 2011



Source: CRS study of PHA discretionary authority.

Discussions with PHA officials about their minimum rent policies suggest that there are varied opinions about the application of a minimum rent. PHA officials were asked if they would increase their minimum rent if there were no HUD guidance on the amount allowed and interviewees gave mixed responses. Some PHA officials reasoned that the families able to meet the \$50 minimum rent would also be able to meet a higher minimum rent. Several PHA officials pointed out that an increase in the minimum rent would actually result in decreased utility reimbursements, which would decrease their administrative burden.⁵⁵ Some PHA officials in favor of increasing the minimum rent stated that doing so would allow PHAs to serve more families, but some PHA officials were also concerned about the possibility of creating a rent burden for those tenants with the least income. Several PHA officials stated that they could not answer the question of whether the minimum rent should be higher or lower without completing a rent burden study. Some PHA officials also believed that a higher minimum rent could be supported in their local communities.

Some PHA officials that opposed increasing the minimum rent beyond the current ceiling of \$50 pointed out that very few tenants were subject to the minimum rent and thus a minimum rent increase would not result in significant savings. These PHA officials were also concerned that increasing the minimum rent would result in a greater number of hardship hearings and that the cost of the hardship hearings would negate the savings from an increased minimum rent. More than one PHA official opposed to increasing the minimum rent stated that they saw no reason to do so when they had sufficient reserves. Finally, some PHA officials expressed concern about increasing the rent of their most vulnerable tenants, especially in difficult economic times. The concern for tenants expressed by these PHA officials echoed the concerns of PHA officials surveyed in HUD's 2000 study. In HUD's study, PHA officials worried that the minimum rent

⁵⁵ A utility reimbursement is the amount by which the housing assistance payment exceeds the rent to the owner. The PHA pays a utility reimbursement if the utility allowance (for tenant-paid utilities) exceeds the amount of the total tenant payment. If there is a utility reimbursement, the PHA pays the full rent and sends the utility reimbursement to the family or the utility company. (24 C.F.R. 5.632)

might create financial stress for tenants that had little or no income and expressed concern over how tenants might come up with the minimum rent.⁵⁶

Implications

In general, PHA officials were favorably disposed to having some minimum rent, which is reflective of the survey data showing that at least 79% of PHAs had a minimum rent set at either \$25 or \$50. Some PHA officials believed that requiring tenants to pay rent made tenants feel responsible for the units and appreciate the housing assistance that they received. Some PHA officials also believed that there was an inherent fairness in all tenants paying something. One PHA official argued that if a tenant cannot pay a minimum rent of \$50, then the tenant was not prepared to form his or her own household. The PHA official believed that the minimum rent acted as a minimum requirement for participation in the program. One possible conclusion that can be drawn from discussions with PHA officials is that although they did not consistently see the minimum rent policy as a strategy to maximize program revenue, PHA officials did think of the minimum rent as a means to ensure responsibility and fairness within the program.

Interim Recertification Policy

PHAs are required to complete an annual examination of income for all families participating in the Housing Choice Voucher program; this annual examination process is used to determine a family's housing assistance and the amount the family contributes to the unit's rent. PHAs must also examine the family's income whenever there is a change in household composition. These required examinations are designed to ensure that the subsidies paid to families are accurately calculated. Improper payments in the HCV program, particularly those attributed to unreported and underreported income, have been of concern for those responsible for the oversight of the program.⁵⁷

Under the program's regulations, PHAs are granted the discretion to establish their own policies on recertifications of income between annual examinations of income, referred to as interim recertifications.⁵⁸ PHAs may perform interim recertifications at any time, such as if there appears to be an underreporting of income, but PHAs may also establish policies requiring tenants to initiate the interim recertification. Specifically, PHAs can set the threshold at which tenants must report changes in income and at which the PHA will process interim recertifications to adjust families' housing assistance subsidy level and tenant rent. The provision of this discretion acknowledges that recertifying income between annual income examinations may not be cost-effective for PHAs.⁵⁹ The Housing Choice Voucher Program Guidebook gives the following guidance in terms of interim recertification policies:

- consider the administrative costs of processing interim increases in income versus the cost savings if the HAP (Housing Assistance Payment) is reduced;

⁵⁶ U.S. Department of Housing and Urban Development, Office of Policy Development and Research, "The Uses of Discretionary Authority in the Tenant-Based Section 8 Program: A Baseline Inventory of Issues, Policy, and Practice," November 2000, p. 44.

⁵⁷ See HUD's Quality Control for Rental Assistance Subsidies Determinations reports from 2000-2009.

⁵⁸ 24 C.F.R. 982.516

⁵⁹ Housing Choice Voucher Program Guidebook, p. 6-1.

- concentrate on the type of interim changes that are most likely to result in large increases in a family's share of the rent (and a corresponding large reduction in subsidy); and
- develop a policy that can be easily explained and understood by participants as well as staff who must enforce it.⁶⁰

However, in order to increase income verification integrity, HUD has issued other regulations and guidance that restrict PHAs' discretion to set income reporting and interim recertification policies. These regulations mandate that PHAs use the information provided by HUD's Enterprise Income Verification (EIV) system to confirm a household's income and to determine the household's rent in cases where income reported by the household differs substantially from that reported by the EIV system.⁶¹ The EIV system provides PHAs with access to new hire, wage, unemployment compensation, and Social Security benefit information through a data matching process for households receiving assistance. HUD guidance clarifies that PHAs should examine discrepancies between data reported by households and data in the EIV system on a quarterly basis and resolve any discrepancies greater than \$2,400 per year.⁶² HUD's regulations and guidance on the EIV system effectively means that PHAs have the discretion to disallow a \$200 monthly income increase for both tenant reporting and interim recertifications. It appears that the regulations and guidance are unclear to some of the sampled PHAs, as they do not seem to be processing interim recertifications according to the requirements associated with the EIV system.

Findings

Although 79% of all PHAs in the sample required tenants to report all changes in income, most did not process interim recertifications for all income changes.⁶³ Only 33% of all sampled PHAs processed interim recertifications for all income changes, while 45% of PHAs processed interim recertifications at some time before annual recertification and 21% did not process interim recertifications in between annual recertifications. In comparison, the HUD PHA Discretionary Authority study (2000) showed that 48% of PHAs always processed interim recertifications for income changes and that 16% of PHAs did not process interim recertifications. The HUD study also showed 36% of PHAs sometimes processed interim recertifications for income changes. This comparison suggests that, over the past decade, some PHAs have opted out of recalculating subsidies for all income changes. (See **Table 9** and **Table 10**.)

Table 9. Income Reporting and Interim Recertification Policies

PHA Policy	# of PHAs	% of PHAs
Report all changes, interim recertification for all increases	43	33%
Report changes and process interim recertification at threshold level	12	9%

⁶⁰ Housing Choice Voucher Program Guidebook, p. 12-9.

⁶¹ 24 C.F.R. 5.233 and 24 C.F.R. 5.236.

⁶² PIH Notice 2011-25 (HA), pp. 11-13.

⁶³ Please note that the discussion of PHA interim certification policies does not include PHA policies for families participating in the Family Self Sufficiency (FSS) program or for families participating in the Earned Income Disallowance program. Many PHAs have policies that differ for tenants participating in these programs. In addition, the interim recertifications discussed in this section refer to interim recertifications initiated by families due to changes in household income; PHAs may initiate interim recertifications for families that report zero income or have seasonal employment. PHAs may also initiate interim recertifications when they suspect program fraud.

PHA Policy	# of PHAs	% of PHAs
Report all changes, interim recertifications processed at higher threshold	38	29%
Interim recertification if family has previously requested decrease	4	3%
No interim recertifications	27	21%
Other (e.g., interim recertifications for new source of income only)	5	4%
Missing data	2	2%
Total	131	100%

Source: CRS study of PHA discretionary authority.

Table 10. Comparisons of Interim Recertification Policies (2000 and 2011)

Categories of Interim Recertification Policies	2000	2011
Wait until annual examination for subsidy recalculation	16%	21%
Sometimes recalculate subsidy before annual examination	36%	45%
Always recalculate subsidy before annual examination	48%	33%
Missing data	n/a	2%
Total	100%	100%

Source: CRS study of PHA discretionary authority and data from HUD's PHA Discretionary Authority Study (2000).

Note: The differences presented here have not been evaluated for statistical significance.

During discussion with CRS staff, PHA officials mentioned several administrative factors that affected the processing of interim recertifications. Some PHA officials found that setting the income change threshold for processing interim recertifications was a tradeoff between decreasing housing assistance payments and increasing the administrative burden for PHA staff. Thus, PHAs tried to set the threshold level for interim recertifications at an amount that seemed “worth it.” However, several PHA officials seemed unclear on how their threshold policies came into being. In addition, several PHA officials noted that the EIV requirements had led to changes in their policies. One PHA that had previously not processed interim recertifications changed its policy to align with EIV reporting requirements. One PHA official noted that not processing interim recertifications for all income changes created more EIV discrepancies to be corrected, while other PHA officials mentioned the importance of processing interim recertifications for all income changes so as not to be “dinged” by the EIV system. Finally, some PHA officials thought that processing the interim recertifications was no more work than updating a tenant’s file to show changes in income.

PHA officials also described their policies in terms of tenant behavior. Several PHA officials suggested that it was a better policy to have tenants report all changes in income to avoid confusion over which income changes should or should not be reported. However, one PHA official suggested that requiring tenants to report all changes in income, given how variable family income can be, essentially created fraud cases, which they preferred to avoid. Some PHA officials thought it was important to adjust a tenant’s rent to changes in income in order to prepare the tenant for a time when he or she would not be subsidized. On the other hand, several PHA officials noted that tenants had unstable incomes, with one PHA official stating that

processing interim recertifications for all income changes “would drive you crazy.” Several PHA officials mentioned that processing interim recertifications when incomes changed seemed fair while other PHA officials thought that the better policy was to allow tenants to benefit from their increased income in order to reward work.

Implications

Table 9 highlights the variety of PHA policies, which ranged from not requiring the reporting of income changes to the processing of income recertifications for all changes in income. From the data collected, it appears that PHAs are applying a variety of reporting and interim recertification policies, but that several policies are common throughout the PHA community. Interview data suggest that the PHAs may find technical assistance in establishing their reporting and interim recertification policies beneficial. In addition, a clarification on the scope of PHAs’ discretion might prove useful, as the current guidance on interim recertifications and on the usage requirements for the EIV system appear to have created confusion for some PHAs.

Administrative Policies

Waiting List Administration

As discussed in the “Local Preferences” section of this report, PHAs must establish waiting lists to manage the applicant pools for the program because demand for Housing Choice Vouchers far exceeds the supply of vouchers.⁶⁴ Local preferences give PHAs the ability to prioritize who they serve based on specific tenant characteristics (e.g., veterans or homeless individuals), but PHAs’ waiting list administrative procedures also influence who receives assistance. Program regulations grant PHAs the discretion to maintain their waiting lists as they best see fit to ensure an adequate pool of applicants for current funding.⁶⁵ PHAs have developed different models for maintaining their waiting lists: PHAs decide when to open and close their waiting lists and how to add applicants to them. Due to the length of the waiting lists, PHAs may only open them periodically; there are PHAs that have had their waiting lists closed for multiple years. For instance, one PHA that took part in this research study had not opened its waiting list since 2002. Under these conditions, the opening of a waiting list may present itself as a once-in-a-lifetime opportunity for low-income individuals to apply to receive assistance. This can result in disorder, depending on the PHA’s application procedures. For example, when the East Point Housing Authority (which is located in a suburb of Atlanta, GA) opened its waiting list in 2011 after eight years of being closed, 30,000 people massed to receive applications.⁶⁶

PHAs may decide to add applicants to their waiting lists based on the date and time of application (i.e., first come, first served) or based on random selection. Either ranking method can incorporate local preferences (discussed earlier in this report) as well.

⁶⁴ Joint Center for Housing Studies, *The State of Nation’s Housing 2011*, June 6, 2011, pp. 28-29.

⁶⁵ 24 C.F.R. 982.206

⁶⁶ Craig Schneider and Tammy Joyner, “Housing Crisis Reaches Full Boil in East Point; 62 Injured,” *The Atlanta Journal Constitution*, August 11, 2010, <http://www.ajc.com/news/atlanta/housing-crisis-reaches-full-589653.html>.

Findings

Seventy-seven percent of sampled PHAs place applicants on waiting lists using the date and time method. Only 18% of PHAs use a random selection method to add applicants to the waiting list.⁶⁷ However, it is possible that when PHAs prepare to open long-closed waiting lists, they will consider the use of a random selection method in place of their current date and time policy because most applications would be submitted within the same time frame. During discussions with CRS staff, several PHA officials indicated that the opening of their waiting lists was not likely to happen in the immediate future and some mentioned that they needed to reduce the number of tenants within their current programs and thus were not considering adding applicants to the waiting list. The process for adding applicants to the waiting list is thus rarely exercised by many PHAs.

Implications

At this time, no data set of national waiting list lengths is available. However, during discussions with CRS, PHA officials made it clear that the demand for vouchers outstripped the supply. One PHA with its waiting list closed since 2002 had opened its waiting list in 1997 and received 11,000 applications at that time. Another PHA in the sample opened its waiting list in 2009 and received 10,000 applications. A large metropolitan PHA currently has more than 20,000 applicants on its waiting list. On the other hand, CRS also spoke to a PHA that had not closed its waiting list in 14 years but would do so in the near future because the waiting list had become too long. That this PHA had not faced the same challenges with its waiting list may be due to its local management of the Housing Choice Voucher program, but it may also be suggestive of a mismatch between the distribution of vouchers and the need for housing assistance in any given area. The length of waiting lists and their relationship to program structure and operations is an area for further research.

Search Time and Extensions

Once a family is selected from the waiting list, they have to find a landlord willing to accept the voucher. Some families may have difficulty finding a unit, depending on the local rental market and the needs of the family, and some families must return their vouchers when they are unable to locate a unit within the time specified by the PHA. PHAs have the discretion to set the length of the initial search time and the number and length of search time extensions as a tool to increase the “success rate,” or the proportion of families that are able to lease a unit during the granted search time.⁶⁸ This CRS study does not examine success rates, but HUD has issued several studies on success rates, with the most recent data being from 2000.⁶⁹ In 2000, HUD estimated that the national success rate was approximately 69%. Earlier HUD studies estimated the success rate at approximately 50% in the early 1980s, 68% in the mid-1980s, and 81% in 1993.⁷⁰

⁶⁷ For the question of how PHAs add applicants to their waiting lists, 2% of the data was missing. An additional 3% of PHAs did not have a procedure that could be categorized as “date and time” or “random selection.”

⁶⁸ U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *Study on Section 8 Voucher Success Rates: Volume 1 Quantitative Study of Success Rates in Metropolitan Areas*, November 2001, pg. i.

⁶⁹ Ibid, p. i.

⁷⁰ The decline in the success rate, which had shown a general trend of increasing over time, might be explained by the tightening of the rental market between 1993 and 2000 or the decrease in 1995 of the fair market rents used to determine the subsidy available within local areas (the FMR declined from 45% to 40% of the area’s rent). See U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *Study on Section 8 Voucher Success Rates: Volume 1 Quantitative Study of Success Rates in Metropolitan Areas*, November 2001, p. i., for

However, it is difficult to estimate what the current national success rate might be, not only because of the length of time since data were last collected, but also because of policy changes that would likely affect the success rate.⁷¹ While approximately 7 in 10 families selected from waiting lists were able to use their vouchers to lease units in 2000, considering both policy changes and rental market conditions, that may not be the case today.

It is important to note that PHAs control several factors that may influence their success rates, including applicant screening criteria, the setting of payment standards, the amount of assistance provided to families in their search for housing, and the length of time granted for the search.⁷² CRS examined PHA policies on the length of the search time and the search time extensions. Regulations require that the initial search time must be at minimum 60 days, but PHAs have the discretion to allow for longer initial search times.⁷³ PHAs may also issue one or more search time extensions.⁷⁴ In addition, PHAs have the discretion to provide automatic extensions or require that families provide proof of search before granting extensions.⁷⁵ HUD encourages PHAs to consider such factors as the tightness of the local housing market and the family's search effort when determining the appropriate length and number of search time extensions.⁷⁶

Findings

The data collected for this study suggest that there are several common practices among PHAs when setting search time parameters. The majority of PHAs establish an initial search time of 60 days, which is the minimum required by regulations. Of the sampled PHAs, 79% had an initial search time of 60 days, 6% had an initial search time of 90 days, and 12% had an initial search time of 120 days. (See **Table 11.**) The largest number of PHAs (43%) extended the search time to 120 days, while 4% extended it to 180 days, and 4% extended the search time beyond 180 days. Five percent of PHAs gave extensions to only the elderly and those with disabilities. Other search time structures were also common with PHAs. Approximately 20% of PHAs provided extensions without specifying the maximum length for the search time. Another 23% of PHAs provided some form of extension such as extending the search time to 90 days automatically and then to a full 120 days with documentation of an extenuating circumstance; this represents a more stringent extension policy than PHAs that extend the search time to 120 days without further administrative procedures. (See **Table 12.**)

further detail.

⁷¹ Since 1999, PHAs have had the discretion to set the payment standard at 90% to 110% of the area's fair market rent, giving PHAs the ability to increase the subsidy available to families and thus increase the number of families able to use their vouchers to rent units. On the other hand, the introduction of the rent burden cap of 40% in 1995 has the opposite effect of decreasing the success rate because families would have less access to units that exceed the payment standard. The current tightness in the rental market would also likely decrease the success rate. See U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *Study on Section 8 Voucher Success Rates: Volume 1 Quantitative Study of Success Rates in Metropolitan Areas*, November 2001, for further detail.

⁷² U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *Study on Section 8 Voucher Success Rates: Volume 1 Quantitative Study of Success Rates in Metropolitan Area*, November 2001, p. ii.

⁷³ 24 C.F.R. 982.303

⁷⁴ 24 C.F.R. 982.303

⁷⁵ Housing Choice Voucher Program Guidebook, pp. 8-12, 8-13.

⁷⁶ Housing Choice Voucher Program Guidebook, pp. 8-12, 8-13.

Table 11. Initial Search Time

Initial Search Time	# of PHAs	% of PHAs
60 days	104	79%
120 days	16	12%
90 days	8	6%
Other	1	1%
Missing data	2	2%
Total	131	100%

Source: CRS study of PHA discretionary authority.

Table 12. Search Time Extension Policy

Total Search Time	# of PHAs	% of PHAs
120 days	56	43%
180 days	5	4%
More than 180 days	5	4%
Unspecified	26	20%
Extension for elderly and persons with disabilities only	7	5%
Other	30	23%
Missing data	2	2%
Total	131	100%

Source: CRS study of PHA discretionary authority.

Implications

The comparison of the results of this study to those of HUD’s 2000 study may suggest that PHAs have become stricter in terms of extensions. In the HUD study, approximately 91% of PHAs offered an extended search time of 120 days either through a 60-day extension or two 30-day extensions. Of the PHAs sampled within this study, only 43% would easily fall into the same category. Additional PHAs grant extensions that may result in a 120-day search time (and have been counted in the “other” category), but only under extenuating circumstances. On the other hand, the HUD study showed that 77% of PHAs required proof of an earnest search before granting an extension, while in this study 63% of PHAs required proof of search or extenuating circumstances before the PHA granted the first extension. For search time extensions, direct comparisons between the HUD study and this study are not possible because some of the extension policies (such as a 30-day automatic extension with an additional extension under extenuating circumstances) did not exist or were not represented in the HUD study. The additional variation within PHA policies may also suggest that PHAs are adjusting their search time policies to their local markets as intended by deregulation.

Considerations for Policymakers

The federal government invests more federal resources in the Housing Choice Voucher program than any other direct housing assistance program for low-income families. However, there is

limited information available about how the program is being administered in many communities. This study was designed to expand the knowledge of how PHAs use some of the discretionary authority they are provided under federal law. The choices made by PHAs have implications not only for how they administer their local programs, but also for how families experience the program, how communities and stakeholders perceive the program, and the cost of the program in the federal budget. The implications of specific policy choices and related policy considerations are discussed throughout the report.

However, the findings of this study raise a broader set of considerations that may be of interest to policymakers as they relate to program flexibility and accountability. Program flexibility and accountability are elements of an ongoing tension in the administration of many social services programs, including the Housing Choice Voucher program. The balance between flexibility and accountability in the program's structure may affect the achievement of federal policy goals and creates benefits and drawbacks for PHAs and tenants. The limited scope of this study does not inform what the proper balance between flexibility and accountability might be, but it does offer observations on how the current level of local discretion affects the achievement of federal goals, PHAs, and tenants.

The Achievement of Federal Goals

The need to undertake this research is indicative of the lack of information about PHAs' use of discretionary authority. Currently, HUD field offices ensure that PHAs administer their HCV programs according to the policies stated in their administrative plans; HUD does not make available the general trends in the administration of the HCV program, as is done in this study. Yet, the administration of the program affects the achievement of federal goals, including equitable access to the program. For instance, the local preferences selected by PHAs determine, in part, who has access to assistance. However, it might not be necessary to know about the program's daily administration if PHAs are meeting federal policy goals. In an outcome-based form of accountability, the meeting of federal goals would be monitored; in a regulatory form of accountability, the manner in which PHAs administer the program would be monitored.

Thus, a question raised by this study is what type and level of oversight for discretionary policies is appropriate to ensure that federal policy objectives are met?

Benefits and Drawbacks of Discretionary Authority for PHAs

It is often argued that administrative flexibility decreases administrative burdens, which results in cost savings.⁷⁷ PHA industry groups generally support efforts to increase administrative flexibilities, citing the administrative burden and the administrative costs associated with the current HCV program.⁷⁸ As federal policymakers look for ways to reduce the cost of the HCV program, there is an ongoing interest in the deregulation of assisted housing programs and expansion of the Moving-to-Work Demonstration (see earlier description of the MTW program). However, there is some indication that the cost savings associated with administrative flexibility have not always occurred in the Housing Choice Voucher program.

Within this study, the statements of some PHA officials suggested that some of the discretion granted to PHAs has created its own administrative burden. For instance, one PHA official stated that he wished HUD would develop a uniform policy for denials based on criminal activity so that there would be fewer challenges to the PHA's policy. This finding is supported by testimony PHAs have provided to Congress.⁷⁹ One PHA official testified to Congress in 2006 that "the deregulation contemplated in QHWRA is really re-regulation. We now spend a large amount of staff time on the new administrative provisions of QHWRA, specifically, the agency plan ... the income targeting strategy, rental integrity and its associated PIC reporting."⁸⁰ The official also shared her belief that the reporting requirements tied to areas of discretion negate the benefit of discretion and are costly for the administration of assisted housing programs.⁸¹

This study thus raises the question of whether increased administrative flexibility always leads to decreased administrative burden and decreased administrative costs, particularly when increased administrative flexibility is tied to new reporting requirements and the increased use of tenant protection procedures.

Benefits and Drawbacks of Discretionary Authority for Tenants

Following passage of QHWRA, tenant advocates expressed concern that increased local discretion within assisted housing programs could harm tenants by leading to decreased housing assistance payments and increased tenant rents.⁸² Tenant advocates have also expressed concern that inconsistency in program procedures could cause confusion for program applicants and participants, leading to reduced access to the program.⁸³ This study does not draw conclusions about whether the discretionary policies adopted by PHAs are more or less advantageous to certain program applicants and participants than prior federal policies.

⁷⁷ Emily Cadik and Amanda Nogie, "Moving to Work: Interim Policy Applications and the Future of the Demonstration," U.S. Department of Housing and Urban Development, August 2010, available at http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_10134.pdf.

⁷⁸ Cindy Naber, "Groups & HUD Meet to Discuss Deregulation: PHADA Urges Department to Address Situation with Urgency," PHADA Advocate, Volume 26, Number 22, December 28, 2011, available at <http://www.phada.org/advocate2/pdf/26.22.pdf>.

⁷⁹ U.S. Congress, House Committee on Government Reform, Subcommittee on Federalism and the Census, "Public Housing Management: Do the Public Housing Authorities Have the Flexibility They Need to Meet the Changing Demands of the 21st Century?", 109th Cong., 2nd sess., May 10, 2006 (Washington, DC: GPO, 2007).

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² http://banking.senate.gov/97_04hrg/040997/witness/smith.htm.

⁸³ The Center on Budget and Policy Priorities, *Sharp Expansion of HUD's "Moving to Work" Demonstration Raises Serious Concern*, January 22, 2010, <http://www.cbpp.org/cms/index.cfm?fa=view&id=3055>.

However, this study does provide data on the level of variation within the program. In some areas of PHA local discretion, such as the application of the minimum rent, PHAs appear to be administering the HCV program fairly consistently. On the other hand, there are areas of discretion in which PHA practices diverge, such as local preferences. It may be that these variations in local policy benefit applicants and tenants as PHAs explore the ways in which they use their administrative flexibility to best serve their communities. While this study does not evaluate the effects of local discretionary policies on tenants, it raises the possibility that further research could be valuable.

Dissemination of Best Practices

Several of the PHA officials interviewed expressed interest in seeing the results of this study. These PHA officials were interested to learn the discretionary policies of other PHAs. One official stated that he knew what PHAs in his local area did, but he would be interested to know what PHAs did nationally. If one purpose of local discretion is to provide PHAs with the leeway to find what works best for the administration of the program, it is likely that other PHAs would benefit from the sharing of best practices and lessons learned. Another consideration for policymakers around PHA local discretion is what formal and informal mechanisms are available for the sharing of information about PHA discretionary policies both among PHAs and with policymakers.

Appendix A. Observations about Administrative Plans

According to HUD’s Housing Choice Voucher Program Guidebook, “A PHA’s administrative plan must describe the policies the PHA has adopted in each area where the PHA has discretion.” The guidebook goes on to state that “the housing choice voucher program administrative plan is a supporting document to the PHA plan, and must be made available for public review.” Since the Section 8 administrative plan must (1) describe a PHA’s use of its discretion and (2) be made available to the public, it is an ideal source of information for a study of how PHAs use their local discretion. During the process of collecting and examining PHAs’ Section 8 Housing Choice Voucher administrative plans, CRS made a number of observations about the availability of the plans, their content, and their intended purposes that may be of interest to policymakers.

Availability

While federal regulations and guidance require that PHAs make the Section 8 HCV program administrative plans available for public review, they do not specify what constitutes “public review.” HUD collects other PHA plans, namely the one-year and five-year plans that PHAs are required to develop, and makes them publicly available on the department’s website. Section 8 HCV administrative plans do not appear to be similarly collected and posted online in one place. Some PHAs make their administrative plans available on their own websites. Most of the PHAs selected for this study had websites, but the majority did not have copies of their administrative plans readily accessible on their websites.

For those PHAs that do not make their plans available on their websites, the process through which they can be publicly accessed is less clear. PHA annual and five-year plans generally contain language stating that administrative plans are available for review in a PHA’s office and an address is generally given. Since it was not feasible to physically visit the offices of the PHAs whose plans were not readily available from their website, CRS staff emailed or called PHA offices to request a copy. Most PHAs contacted by phone or email were willing to email an electronic copy of the plan. However, a subset of PHAs did not send an electronic copy of their plans via email. Most of these PHAs were willing to mail paper copies of their plans, but a few PHAs preferred to respond to a questionnaire via email in lieu of sending a plan. Some PHAs that preferred to answer a questionnaire felt it was too onerous to send a copy of their plan, while other PHAs felt that their existing plans were out-of-date and therefore did not reflect the PHA’s current practices.

Most PHAs that were contacted sent copies of plans shortly after the request was made, with a minimal number of reminders. Roughly a quarter of PHAs (36 out of 131) required extensive follow-up, which involved multiple phone calls and emails requesting a copy of the administrative plan, and at times formal follow-up letters and HUD field office assistance in obtaining the plans were necessary. Two PHAs failed to supply copies of their plans for the study. The level of effort required to obtain these public documents from many PHAs was unexpected and raised questions about the extent to which the documents are available to HUD, the public, stakeholders, and tenants for both oversight and public information purposes.

Content and Audience

As noted earlier, PHAs are required to include their discretionary policies in the HCV administrative plans. HUD’s Housing Choice Voucher Program Guidebook advises PHAs to limit

the scope of their plans to include only their discretionary policies. Specifically, the guidebook states

Because changes to the administrative plan require formal approval by the Board of Commissioners or other governing body, including HUD regulations in areas where the PHA has no discretion is not advised. The administrative plan should address only those policies areas [sic] in which the PHA has discretion. Program regulations and the PHA's operating procedures for complying with those regulations can be addressed in a separate procedures manual that can be updated more easily.

Despite this guidance from HUD, of the plans reviewed by CRS, all of them included policies beyond those in which the PHA has discretion.⁸⁴ Many of them repeated HUD regulations verbatim, although some merely summarized HUD regulations, with references to the regulations. One possible reason for the deviation from HUD's guidance is that plans including all program rules and regulations can serve as a procedures manual for PHA staff. When asked about how the plan was used, nearly all of the PHA officials interviewed for this study reported that the PHA plan was used primarily or at least regularly by program staff. Many of the PHA officials interviewed used terms like "bible" and "guidebook" to describe their administrative plans.

When asked about the primary audience for the plan, PHA officials gave different responses, including PHA staff, HUD, local legal aid offices, and tenant advocates. Several PHA officials stated that the plan was meant for landlords and tenants, whereas others stated that they did not think their plans would be understood by residents because of their complexity and the way in which the plans were written. These observations highlight that the administrative plans, in their current forms, have multiple audiences. Further, the observations of PHA officials raise the question of whether the plans meet the needs of their multiple audiences. A limited discretion-only plan would be easier to use for HUD's oversight, and would be administratively easier to maintain for PHAs. However, a discretion-only plan would be less useful as a policy guide. If, as described by PHA officials, the administrative plans are being used as policy guidance for program staff, it follows that the plans would include detail on all of the relevant program rules and regulations. Tenants, landlords, and advocates (such as legal services attorneys) may also find an exhaustive listing of PHA policies more useful than a discretion-only plan.

Although PHAs appeared to use these plans as definitive guides, at times the plans reviewed contained contradictory information or unclear policies. This may have resulted from PHAs stating all of the options provided under the regulations as well as their own choices of policies from those options. Further, most of the plans were lengthy (i.e., hundreds of pages), and some were dated more than 5 to 10 years before the date of this study. Several PHA officials, during the data collection process, remarked that their plans needed to be updated; several noted that updating the plans was a cumbersome process because they are so large. The infrequency of updating and the length of the plans themselves may also contribute to contradictions and unclear policies within some plans.

Policymakers and PHAs may wish to revisit the current administrative plan model, and/or the plans themselves, to ensure they meet the intended purposes and are relevant to the intended audiences.

⁸⁴ One PHA in the study did explicitly separate out its discretionary policies, consistent with HUD guidance, as one part of their plan. The remainder of the plan contained all policies, discretionary and mandatory.

Form

A number of PHA officials who were interviewed mentioned that they purchased their Section 8 administrative plans from private companies. These officials thought that the purchase of the plan, and a related updating service, was worth the cost to ensure that the PHA was in compliance with program rules. Among the PHAs in this study, 42% had plans that appeared to come from an outside consultant.⁸⁵

Table A-I. PHA Plans by Type

Plan Type	# of PHAs	% of PHAs
PHA-created	60	46%
Consultant-created	55	42%
Unclear or questionnaire	14	11%
Missing	2	2%
Total	131	100%

Source: CRS study of PHA discretionary authority.

The private, for-profit companies that sell plan templates generally provide PHAs a set of options from which to choose in order to customize their plans. As noted in the findings of this study, in several cases PHAs appeared to view their policy discretion in the Housing Choice Voucher program from the perspective of the options provided in the plan they had purchased rather than from the perspective of the full set of discretionary options provided under the law.

The high percentage of PHAs purchasing plans from private entities may raise several questions for policymakers. One question may be whether the existing program guidance could be streamlined or improved so that PHAs could redirect the funds spent on plans for other purposes. A related question is how well PHAs understand the authority they are currently granted under the program and what value it has to PHAs. To the extent that PHAs are not fully exercising their local discretion to tailor their programs to local needs, a final question is whether it is appropriate that private companies are effectively establishing a set of dominant local policies.

⁸⁵ CRS determined that plans had come from an outside consultant when they were labeled as such or when the form and text matched those plans labeled as having come from an outside consultant.

Appendix B. Methodology

The sampling frame used for this research limits the Public Housing Authority (PHA) universe, takes a census of very large PHAs (those with more than 6,000 units), and takes a random sample of the remaining PHA universe consisting of large, medium, and small PHAs. CRS defined the PHA universe and the PHA groupings similarly to the HUD study in 2000 on PHA discretionary authority, *The Uses of Discretionary Authority in the Tenant-Based Section 8 Program*, as described below. The chosen sampling frame allowed CRS to observe the discretionary choices of very large PHAs and to make comparisons between very large PHAs and a statistical representation of all other PHAs in the PHA universe. In this report, comparisons between very large PHAs and a statistical representation of all other PHAs have not been made, but the data collected could be used to do so in future reports.

PHA Universe

The PHA universe excludes all PHAs that operate outside of typical program rules or models. These include Moving-to-Work (MTW) PHAs, PHAs in territories, and PHAs administering state-level programs. While these types of PHAs also have discretionary authority, the parameters for their discretionary choices differ from those of the typical PHA and thus are not used for comparison. For instance, PHAs participating in the Moving-to-Work demonstration have greater discretionary authority than that of a typical PHA and are able to act outside of many of the statutory and regulatory rules that govern assisted housing programs. (For more information, see CRS Report R42562, *Moving to Work (MTW): Housing Assistance Demonstration Program*, by Maggie McCarty.) In addition, the PHA universe for this study excludes all PHAs with fewer than 100 units, which is consistent with the earlier HUD study. Although there is an interest in the discretionary choices of PHAs with fewer than 100 units, the time and resource constraints of this study required a limited PHA universe to reduce the necessary sample size. Although PHAs with fewer than 100 units represent approximately 24% of all PHAs, they represent only 1% of all vouchers in the program. Therefore, despite the exclusion of PHAs with fewer than 100 units and the exclusion of MTW and state-level PHAs, the PHA universe of this study, containing 1,732 PHAs, represents 99% of housing vouchers.

Sample Size

As noted earlier, the sampling approach used for this study has two components: a census and a stratified random sample. Very large PHAs (those with more than 6,000 units) represent only 2% of all PHAs, but they administer 29% of all subsidies in the program. Given the outsized impacts of the policies of this relatively small group of PHAs, CRS chose to include all very large PHAs in the sample. This census approach captured the discretionary choices of the 40 very large PHAs with statistical certainty. A stratified random sample was then drawn from the remaining 1,692 PHAs. To make the study size manageable, a sample of 91 PHAs was drawn, which was sufficient to allow a confidence level at 95% and a margin of error at +/- 10%. CRS believes this level of sampling accuracy is appropriate for this study, as it is an initial examination of PHA discretionary choices in which the results will be used for further research and analysis.

The time constraints of this study did not allow for stratified random sampling based upon the size and regions of PHAs, but the study includes PHAs from the various size categories and regions to ensure that the sample does not inadvertently exclude a particular type of PHA. The size and region groupings replicate those of HUD's study to ensure similar representation. The size groupings for the sample are small (100-999 units), medium (1,000-2,499 units), and large (2,500-5,999 units). The region groupings for the sample include the Northeast, the Mid-Atlantic, the South, the Midwest, the Southwest, the West, and the Northwest. We randomly selected four

or five PHAs from each size-region cross-section to meet the minimum sample size of 91 PHAs. Cross-sections representing the largest number of PHAs were assigned five PHAs in order to slightly reduce their under-representation.

The sampling frame below reflects the random sampling of small, medium, and large PHAs and the census of the very large PHAs. In total, data were collected from 131 PHAs. With these data, CRS was able to describe the stated discretionary choices of very large PHAs with certainty and the stated discretionary choices of all other PHAs in the PHA universe with 95% confidence and a margin of error of +/- 10%. CRS did not attempt to make observations about the size or region groupings within this report. Instead, the groupings merely ensured that each type of PHA received representation in the study.

Table B-I. PHA Sampling Frame Distribution

PHA Universe						
Region	Size:	Small	Medium	Large	Very Large	Total
Northeast		299	31	11	5	346
Mid-Atlantic		91	23	6	2	122
Midwest		357	58	14	10	439
South		353	66	33	7	459
Southwest		130	31	14	3	178
West		63	42	15	13	133
Northwest		33	15	7	0	55
Universe total		1326	266	100	40	1732
PHAs Selected for this Study						
Region	Size:	Small	Medium	Large	Very Large	Total
Northeast		5	4	4	5	18
Mid-Atlantic		5	4	4	2	15
Midwest		5	4	4	10	23
South		5	5	4	7	21
Southwest		5	4	4	3	16
West		5	4	4	13	26
Northwest		4	4	4	0	12
Total selected		34	29	28	40	131

Source: CRS study of PHA discretionary authority.

Notes: The PHA sample for the study is not stratified based on size and region. However, an effort was made to include PHAs of varying sizes and from various regions.

Appendix C. Description of Common Local Preferences

PHAs adopted a wide variety of local preferences and provided varying levels of specificity about their preferences. For the purposes of this study, CRS categorized PHAs' local preferences and identified those that were commonly used; they are described below.

Persons with Disabilities: PHAs did not specify a definition of who would qualify as a person with a disability.

Residency (Live or Work): According to program regulations, a PHA's residency preference category must apply to households that live or work in a PHA's jurisdiction. PHAs may include workforce training as an eligible activity for the residency preference.

Elderly: PHAs generally did not specify the age defined as elderly, although some PHAs did note that the preference applied to those 65 years and older.

Government Action: This preference category includes families that are displaced because of PHA or other government action. It applies to households that are displaced from public housing and private residences. Government action may entail such actions as the demolition and redevelopment of public housing, code enforcement, or the public development of a neighborhood.

Displaced for Disaster: Some PHAs limited this preference to victims of federal disasters, while others did not.

Domestic Violence: This category captures PHAs that offer a preference to victims of domestic violence. Some PHAs in this category require documentation (e.g., third-party verification form) of the victim's status and other PHAs require a referral from a social service agency. Some PHAs limit the period of eligibility for this preference.

Veteran/Military: This category encompasses PHAs that granted a preference related to military service. Some PHAs extended veterans preference to active duty military members and some PHAs extended their veterans preference to the spouse of the veteran/active duty member or to the surviving spouse or dependents of the veteran. One PHA extended the veteran preference to the surviving parents of a deceased veteran. Some PHAs also restricted the veterans preference to specific definitions for veterans found in federal and state law. Finally, some PHAs restricted the veterans preference to veterans that were honorably discharged or to veterans that were not dishonorably discharged.

Homeless/At-Risk of Homelessness: There are a range of PHA definitions for the homeless preference. Some PHAs have a broad definition for those that are homeless, while other PHAs have a more limited definition. There are PHAs that require a referral from a shelter or a social service agency to prove an applicant's homeless status, and some PHAs limit their homeless preference to households leaving transitional services. PHAs that only had a preference for homeless individuals that were graduating from the Shelter-Plus-Care program were not included in the homeless preference category because such a preference would only apply to a subset of the homeless population.

Reference to Old Federal Preferences: PHAs that refer to rent burden, substandard housing, and displaced persons are marked as possibly deriving from the old federal preferences. PHAs that list all categories of displaced persons as included in the old federal preferences are also marked.

Working Families (Including Training): This category encompasses PHA preferences for families that participate in the workforce or that participate in workforce training or education programs. Some PHAs specify that the head of household must work or that a certain number of hours must be worked to qualify for the preference. According to program regulations, the elderly and those with disabilities may also claim a working families preference.

Previously Terminated for Insufficient Funds: This category captures PHAs that offer a preference to former program participants who had been terminated from the program due to insufficient funding.

Witness Protection/Avoid Reprisals: This category includes preferences for households in witness protection programs, households at risk of reprisal, and households relocated to prevent crime (e.g., imminent threat of violence). Some PHAs specify the witness protection programs (e.g., HUD IG witness protection program) applicable for the preference.

Landlord Action: PHAs grant a preference to families that are displaced due to landlord action.

Family: PHAs granted a preference to families, with families defined as two or more persons, or families with children.

Hate Crime Victim: This category captures PHAs that offer a preference to those who are victims of or displaced by hate crimes. Some PHAs specify that the household must be in danger to claim the preference.

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